

## 1 UNITED STATES DISTRICT COURT

## 2 DISTRICT OF MINNESOTA

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5 In re: ) Civil 05-MD-1708 (DWF/AJB)  
6 )  
7 GUIDANT CORPORATION ) STATUS CONFERENCE  
8 IMPLANTABLE DEFIBRILLATOR )  
9 PRODUCTS LIABILITY )  
LITIGATION, )  
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10 This Document Relates )  
11 To All Actions ) 9:30 o'clock, a.m.  
12 ) September 21, 2006  
13 ) St. Paul, Minnesota  
14 -----

15 BEFORE THE HONORABLE JUDGE DONOVAN W. FRANK AND  
16 THE HONORABLE MAGISTRATE JUDGE ARTHUR J. BOYLAN  
17 UNITED STATES DISTRICT COURT JUDGE AND MAGISTRATE JUDGE  
18 CIVIL STATUS CONFERENCE PROCEEDINGS  
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24 JEANNE M. ANDERSON  
Registered Merit Reporter  
Suite 646, 316 North Robert Street  
25 St. Paul, Minnesota 55101  
(651) 848-1221

1 APPEARANCES:

2  
3 LEAD PLAINTIFF COUNSEL:

4  
5 Richard Arsenault, Esq.  
6 Neblett, Beard & Arsenault  
7 2200 Bonaventure Court  
8 Alexandria, LA 71301  
9 (318) 487-9874

10 And

11 Elizabeth Cabraser, Esq.  
12 Lieff, Cabraser, Heimann  
13 & Berstein, LLP  
14 275 Battery Street, 30th Floor  
15 San Francisco, CA 94111-3339  
16 (415) 956-1000

17 And

18 Seth R. Lesser, Esq.  
19 Locks Law Firm, PLLC  
20 110 East 55th Street  
21 New York, NY 10022  
22 (212) 838-3333

23 And

24 Charles S. Zimmerman, Esq.  
25 Zimmerman Reed  
651 Nicollet Mall, Suite 501  
Minneapolis, MN 55402-4123  
(612) 341-0400

1 APPEARANCES (Continued):

2

3 PLAINTIFF LIAISON COUNSEL:

4

5 Charles S. Zimmerman, Esq.  
6 Zimmerman Reed  
7 651 Nicollet Mall, Suite 501  
8 Minneapolis, MN 55402-4123  
9 (612) 341-0400

10

11

12

13 FOR THE PLAINTIFFS: Ronald Goldser, Esq.  
14 Zimmerman Reed  
15 651 Nicollet Mall, Suite 501  
16 Minneapolis, MN 55402-4123  
17 (612) 341-0400

18

19

And

20

21

22

23

24

25

Gale D. Pearson, Esq.  
Pearson, Randall & Schumacher, PA  
400 S. 4th Street, Suite 1012  
Minneapolis, MN 55415  
(612) 332-0351

19

And

20

21

22

23

24

25

Daniel E. Becnel, Jr., Esq.  
The Law Offices of  
Daniel E. Becnel, Jr.  
106 W. 7th Street  
P.O. Drawer H  
Reserve, LA 70084  
(985) 536-1186

1 APPEARANCES (Continued):

2

3 LEAD DEFENDANT COUNSEL:

4

Timothy A. Pratt, Esq.  
Shook, Hardy & Bacon, LLP  
2555 Grand Boulevard  
Kansas City, MO 64108-6550  
(816) 474-6550

7

8

9

LIAISON DEFENDANT COUNSEL:

10

11

Joseph M. Price, Esq.  
Faegre & Benson  
2200 Wells Fargo Center  
90 South 7th Street  
Minneapolis, Minnesota 55402-3901  
(612) 766-7000

12

13

14

15

16

\* \* \*

17

18

19 FOR THE DEFENDANT:

20

Andrew D. Carpenter, Esq.  
Shook, Hardy & Bacon, LLP  
2555 Grand Boulevard  
Kansas City, MO 64108-6550  
(816) 474-6550

21

22

23

24

25

1 (In open court.)

2 THE HONORABLE JUDGE FRANK: You may be  
3 seated. Thank you. We apologize for the late start.  
4 I guess it was our questions, Judge Boylan. We  
5 certainly wouldn't want to allocate it to the lawyers on  
6 either side, but they have been with us since eight this  
7 morning.

8 So, welcome for those of you who haven't been  
9 here to the 180 Building that the Federal Government  
10 calls a temporary placement of three years. We just had  
11 a one-year anniversary, I think.

12 We can go through the agenda. We would note  
13 a couple of things, and see if Judge Boylan has anything  
14 to add before we start going through these. Some of  
15 these we will both respond to, some one of us may  
16 respond to.

17 It has been noted by letters that I read for  
18 the first time this morning, but there has been some  
19 exchange in the last week, because they weren't  
20 addressed to me, on the agenda as the Rebecca Smith  
21 device issue. We will determine the status of that and  
22 whether there are motions that are going to be filed or  
23 need to be filed given at least the content of the  
24 letter exchange that Judge Boylan may respond to when we  
25 get there, we will see.

1           Since the last meeting, the two of us did  
2 something last Friday that we will be doing regularly.  
3 We had a breakfast meeting with Judge Leary. And he  
4 fully apprised us in some detail of the status of the  
5 cases here in Minnesota. And we full apprised him in  
6 some detail about the status of the cases and where we  
7 are at. And we have all talked before, we just haven't  
8 sat down. And we plan to do that on a regular basis,  
9 now.

10           And he has the same interest as we do in  
11 trying to coordinate and cooperate with one another and  
12 hopefully serve the interests of both sides of the aisle  
13 on these cases.

14           The next meeting dates will be October 26th  
15 for the in-person conference.

16           MR. ARSENAULT: I think that is the 28th,  
17 Your Honor.

18           THE HONORABLE JUDGE FRANK: The 26th. I  
19 believe the 28th might be a Saturday.

20           THE HONORABLE MAGISTRATE JUDGE BOYLAN:  
21 October 26th is a Thursday.

22           MR. PRICE: That is in St. Paul, here, Your  
23 Honor?

24           THE HONORABLE JUDGE FRANK: Right.

25           THE HONORABLE MAGISTRATE JUDGE BOYLAN: And I

1 believe October 12 you are talking about for the --

2 THE HONORABLE JUDGE FRANK: For the telephone  
3 conference. Did we need to revisit those dates?

4 MR. ARSENAULT: No, those are fine, Your  
5 Honor.

6 THE HONORABLE JUDGE FRANK: Anything before  
7 we go down the agenda?

8 THE HONORABLE MAGISTRATE JUDGE BOYLAN:

9 THE HONORABLE JUDGE FRANK: We can go right  
10 to the agenda and roll down, starting with item number  
11 one.

12 Well, I will sit tight. Go ahead, Mr.  
13 Zimmerman. We will wait until we get to the issue on  
14 medical authorizations, because it does relate to one of  
15 the agenda items in terms of the Court issuing an order  
16 between now and the end of the business day tomorrow.  
17 We will wait until we get there.

18 MR. ZIMMERMAN: Good morning, Your Honors.  
19 Charles Zimmerman for the Lead Counsel. We provided the  
20 Court with a joint agenda for the status conference and  
21 it was electronically served on the 19th, and I believe  
22 properly posted.

23 We are going to go through that agenda, I  
24 think, in the order of the agenda, unless the Court  
25 wants to take anything out of order. And we will report

1 to the Court. And if there are any other matters that  
2 require any further discussion or any argument, we will  
3 make it at that time, unless we defer it to the back of  
4 the calendar.

5 The first item, Your Honors, is the status of  
6 cases filed in Federal Court and transfers into the MDL.  
7 Mr. Pratt normally has better statistics than I do, so I  
8 will let him provide those.

9 MR. PRATT: Good morning, Your Honors. Tim  
10 Pratt for the Defendants. The total number of cases you  
11 all have responsibility for right now that are caught up  
12 in the District of Minnesota, the MDL, are 566.  
13 According to the latest tally I've received, I think  
14 that is as of the 20th of this month. The number here  
15 at the MDL is 566.

16 There are 40 Federal Court cases pending  
17 transfer before the Judicial Panel, now that is the  
18 Federal Court tally. There are 64 State Court cases  
19 pending still. The greatest number of State Court  
20 cases, as I recall clearly, Minnesota has the greatest  
21 number of cases. California has, I think, the next  
22 greatest number of cases. And we are picking up a few  
23 cases in New Mexico, by the way. So, that is sort of  
24 the tally as we have it now, Your Honors.

25 THE HONORABLE JUDGE FRANK: Thank you.



1                   MR. ZIMMERMAN: Next on the agenda, Your  
2 Honors, is the representative trial process update  
3 revised bellwether selection date.

4                   We had continuing discussions on narrowing  
5 the original group of cases down to the six that are  
6 going to be selected for bellwether, and subject to the  
7 approvals and perhaps any modifications by the Court.  
8 But, we are going to submit six to Your Honors at the  
9 end of the process.

10                  I believe the strike date is the next date to  
11 meet and confer and take our next round of strikes. It  
12 is now -- is it October 1st?

13                  MR. LESSER: It was to be today. We will  
14 discuss -- we can narrow things further, but I think the  
15 goal that we heard expressed by the Court was to have it  
16 completed by October 1st.

17                  MR. ZIMMERMAN: Right, I beg your pardon.  
18 That was the day of offering them. I beg your pardon.  
19 But, we will have another strike. It was going to be  
20 today. It has been moved. We don't have the exact  
21 date, but rest assured the process is moving.

22                  Just for everyone's edification, we have been  
23 taking discovery, as well as reviewing from both sides  
24 the appropriateness for representative trials of 40  
25 cases now down to 20. And we are going to be meeting

1 again very soon to strike that group even further.

2           There is a number of issues that are  
3 connected to that which has to do with the plaintiff  
4 fact sheets, the medical information exchange, certain  
5 depositions of the representative plaintiff, certain  
6 depositions of sales reps, or what was often referred to  
7 as detail people who had been responsible for discussing  
8 these devices with the doctor.

9           But, I am here to report that the process is  
10 moving very well, and we look forward to having those  
11 cases properly before Your Honor on or about October 1  
12 for your ultimate review and comment.

13           MR. PRATT: Is it all right if I stand here?  
14 Is the courtroom too large for people not to hear my  
15 voice?

16           THE HONORABLE JUDGE FRANK: It will do.

17           MR. PRATT: Mr. Zimmerman is correct in terms  
18 of the status of all of this. There are some nagging  
19 issues that we are going to try to resolve over the next  
20 few hours or days that sort of have an impact on the  
21 selection process. But, we have committed to Your  
22 Honors this morning that we expect that process to be  
23 resolved and the number reduced to six by October 1.

24           Clearly, if we have any issues that need your  
25 involvement, we have your telephone number and we can

1 reach you in that regard. I don't think it is going to  
2 be a problem. I think October 1 or before we will have  
3 our six bellwethers selected.

4 THE HONORABLE JUDGE FRANK: Just an  
5 observation on our part, and we may have made the  
6 observation at the last time we were together. It is  
7 consistent with our comments in chambers this morning.

8 We view the matters on schedule. Whether we  
9 try six or one, we will be trying cases in March of next  
10 year. As far as we can see, everything is on schedule.  
11 The only thing that hasn't been decided is what the  
12 phrase trying cases back to back means. To some lawyers  
13 and judges, that means not so much as a day break in  
14 between, and to others it means something different than  
15 that.

16 That will be an easy area to work out,  
17 because the cases will all be given our priority and we  
18 will try, whether it is six or one, they will be tried  
19 in the spring, absent a settlement. And that is the  
20 message that we have tried to go with. And that means,  
21 necessarily, we have made a commitment this morning as I  
22 think we have before, if that means access to the Court  
23 on an expedited basis to break out one of these  
24 categories of cases for summary judgment motions,  
25 whether it relates to a causation or liability or other

1 issue, we will set our schedules up so hopefully it  
2 won't be our schedules that will get us all off track,  
3 because we have tried to make a commitment to all  
4 parties that we will stay on schedule, unless there is  
5 some compelling reason why we should not. I don't know  
6 if you want to add anything to that?

7 THE HONORABLE MAGISTRATE JUDGE BOYLAN: No.

8 THE HONORABLE JUDGE FRANK: That is kind of  
9 the mood we are trying establish. And I think we are  
10 all essentially on the same page. So -- all right?

11 MR. ZIMMERMAN: Thank you, Your Honors.

12 I believe number three and four are related.  
13 It has to do with the production of representative  
14 plaintiff's documents, and production of sales  
15 representative documents and depositions. We had a very  
16 good informal discussion in chambers regarding these  
17 issues. And we have agreed to continue to meet and work  
18 these issues out.

19 This basically has to do with what I  
20 introduced in the representative process earlier, making  
21 sure we have the documents and the deposition testimony  
22 that is going to be needed. It is not about perfection,  
23 it's about getting it done the best we can.

24 At the time we make these strikes and at the  
25 time we pro-offer these cases for representative trials,

1 and we are working very hard to make sure we have the  
2 best depositions and the most complete documents  
3 possible of the parties. And I think it is working  
4 well. There has been a lot of work going into it, but  
5 we are here to report it is working well.

6 And if anything would come up in the interim  
7 period between now and the first, we will contact the  
8 Court at scheduled times and nonscheduled times.

9 MR. PRATT: And the Defense is committed to  
10 meet and confer on all of those topics.

11 MR. ZIMMERMAN: The next item on at agenda,  
12 Your Honor, is the one you referred to at the beginning  
13 of the process this morning, which is the Rebecca Smith  
14 device issue.

15 I believe --

16 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Is  
17 Mr. Ramey here?

18 MR. ZIMMERMAN: Mr. Ramey is here.

19 MR. RAMEY: Good morning, Your Honors.

20 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Good  
21 morning. Mr. Ramey, do you want to come up for a  
22 moment. I had a letter directed to me, and I had a copy  
23 of your letter to the Plaintiff Steering committee  
24 included in the submission to me.

25 I have since not only had a chance to review

1 your letter, but also the Plaintiff Steering Committee's  
2 letter, but also the response from the Defendant. I  
3 think, and I shared this with Judge Frank and the  
4 Steering Committee this morning, as well as Defense  
5 Counsel. I do think it is appropriate to vent these  
6 kinds of disputes through the Steering Committee and tee  
7 them up at least on our radar screen during these  
8 monthly sessions that we have.

9 But, to the extent that you are seeking  
10 particular forms of relief, what I am going to suggest  
11 that you do is file a formal motion and get the formal  
12 response. And we will tee it up in that fashion. But,  
13 before you do that, as we have been requiring all of the  
14 parties to do in reference to any disputes that come up  
15 between the Plaintiffs' Steering Committee and the  
16 Defendants, is to have an informal meet and confer with  
17 the opposite party to see if it can be resolved without  
18 court intervention. So, we got your letter. We know  
19 your concerns.

20 Whether or not you want to proceed beyond  
21 meet and confer and some agreement that can be reached  
22 between yourself and Defense counsel, I will leave that  
23 up to your judgment.

24 MR. RAMEY: I appreciate your insight, Your  
25 Honor. I read Mr. Pratt's response to my letter to the

1     Lead Counsel Committee. And I appreciate and accept his  
2     willingness for us to test the device. I think we can  
3     work out an agreement as to the testing of the device  
4     that is mutually agreeable to both parties. And at this  
5     point, I think we will accept his representation that  
6     the device has not been destructively tested, reserving  
7     our right, of course, to bring such a motion if we later  
8     find out through testing that it is not.

9             I think my concerns, though, date back to  
10    September and October when we asked for the device. I  
11    think we did meet and confer on that issue, and we were  
12    told that we don't have it.

13            Now, it may be that Shook Hardy did not have  
14    the device, but clearly given the event summary, Guidant  
15    did have the device. And they have --

16            THE HONORABLE MAGISTRATE JUDGE BOYLAN: I  
17    don't think that there is any disagreement, from what I  
18    have seen of the submissions, that it probably in a  
19    perfect world would have been handled differently. But,  
20    whether or not it raises your concern to the extent you  
21    want to make a formal motion and come back up here to  
22    Minnesota to argue it, I will leave that up to you after  
23    you have met and confer.

24            I know you have traded letters and I know  
25    that you have had a chance to see their response. I

1 think maybe a personal meet and confer, even this  
2 morning after we are finished, might be appropriate.

3 MR. RAMEY: I will certainly do that. The  
4 only issue for me, really, on a short-term basis is  
5 without the testing and without having deposed the sales  
6 rep who took the device, we are at a procedural  
7 disadvantage given the upcoming strike session.

8 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Sure.

9 MR. RAMEY: And one of the questions I have  
10 is, I would assume that if this case is stricken by  
11 Guidant, that one of the remedies we may be able to seek  
12 is reinstatement of Ms. Smith as a potential bellwether  
13 or representative plaintiff.

14 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Well,  
15 I presume that that will be one of the topics you can  
16 visit with him about.

17 MR. RAMEY: Okay. Thank you, Your Honor.

18 THE HONORABLE JUDGE FRANK: May I just -- one  
19 thing. We will figure out, depending on if this isn't  
20 resolved as -- and I probably wouldn't say this except  
21 that it was suggested that as we get more and more of  
22 these orders on the website, it gets a bit cumbersome  
23 for people to kind of pour through, well, how are these  
24 types of situations handled.

25 Whether or not one or both of us here,



1 depending on the nature of the relief requested and  
2 whether or not there needs to be oral argument or  
3 written submissions in addition to what you have said  
4 and Judge Boylan said, we will figure that out at the  
5 appropriate time. But, there won't be any unnecessary  
6 delays, so --

7 MR. RAMEY: Thank you, Your Honor.

8 THE HONORABLE JUDGE FRANK: Thank you.

9 MR. ZIMMERMAN: Your Honor, the next really  
10 three items, proposed revisions to PTO 15A, which has to  
11 do with the device testing protocol, proposed amendment  
12 to PTO 19, which has to do with what happens if  
13 plaintiff facts sheets are not properly filled out and  
14 filed timely. And number 8, plaintiff fact sheet  
15 simplification.

16 We discussed this with counsel for Boston  
17 Scientific and we discussed it in chambers. And we all  
18 agree that we would like to look at this process in the  
19 whole, look at the plaintiff fact sheet, look at what  
20 happens if you don't do the process correctly, and  
21 really try and see if we can meet and confer on these  
22 issues and come up with a process that perhaps could be  
23 more streamlined on both ends, on both extremes.

24 I can't make any commitment that we will find  
25 common ground. We agreed to meet and try and find

1 common ground. To now that we have been probably a year  
2 into this case and we know the issues that are contained  
3 in plaintiff fact sheet disclosures and conduct  
4 appropriate if the plaintiff fact sheets are not  
5 properly complied with, we know these issues better and  
6 we are going to make an effort to try and streamline  
7 that process, simplify the process, and give other PTO's  
8 perhaps drafted for approval by the Court that might  
9 simplify that process. We learn through these  
10 experiences of doing. And now we have learned a lot,  
11 both sides, and we are committed to meet and try and  
12 make the process.

13 I don't want to use the word more user  
14 friendly, that is really not appropriate. But, more  
15 appropriate for these proceedings as they now exist.  
16 And that is our commitment to do that. And hopefully we  
17 will be able to come up with something.

18 MR. PRATT: There are several issues sort of  
19 wrapped up into items 6, 7 and 8, Your Honors, on PTO  
20 15A, 19 and the plaintiff fact sheet.

21 I think our goal is to meet and confer, to do  
22 a little give and take to see if we can reach some  
23 common ground on that. I agree with Mr. Zimmerman. Our  
24 goal on this side of the room is to get the essential  
25 information we believe we need from the Plaintiffs who

1 have sued us. If we can get all of that information in  
2 a more simplified way, we are open to it. We are not  
3 willing to give up the right to information, but we are  
4 certainly willing to discuss a mechanism where that  
5 information can be obtained more simply, and we will be  
6 working with the Plaintiff's Steering Committee in that  
7 regard.

8 THE HONORABLE JUDGE FRANK: This may be,  
9 then, the appropriate time on the -- I will use the  
10 phrase -- medical authorizations. There are pending  
11 motions by two or three individual Plaintiffs, and I had  
12 letter responses from Guidant/Boston Scientific on the  
13 form of those medical authorizations. And what I said  
14 in chambers, I will say here, in the context of what has  
15 just been exchanged. Because I wanted to ask counsel  
16 before I did an order, while reasonable people may  
17 differ on what exactly, if you roll all of the pretrial  
18 orders together, what is the Court-approved medical  
19 authorization procedure with respect to both time  
20 periods, health care providers and the like, I will file  
21 an order before tomorrow is out. And we will probably,  
22 just in the interests of a plaintiff, new or old going  
23 on to the website and seeing all of these orders, we  
24 will probably put it somewhere. That it is the first  
25 thing you will see as you open up the page, as we did

1     this week earlier about a reminder on courtesy copies.  
2     We will put that out, and hopefully that will resolve  
3     those issues in fairness to both parties.

4             So, the order will be done between now and  
5     tomorrow, because that is one issue on the Plaintiff  
6     fact sheets on medical authorizations that I think is  
7     straightforward. So, in light of what you all said,  
8     consistent with our remarks in chambers, we will do the  
9     order and put it out front and center. So, that should  
10    resolve at least for now those issues, unless -- yes?

11            MR. BECNEL: Judge? I recently got a --

12            THE HONORABLE MAGISTRATE JUDGE BOYLAN: Why  
13    don't you just identify yourself for the record?

14            THE HONORABLE JUDGE FRANK: Yeah, go ahead  
15    for the record.

16            MR. BECNEL: Daniel Becnel. I recently got  
17    an adverse ruling in Washington state on PPA cases  
18    dealing with this issue.

19            And the reason why, and I want to point it  
20    out, because you get in a conundrum where you get a  
21    referral lawyer that refers you the case. You take the  
22    case, the client fills out or partially fills out fact  
23    sheets. You can't -- and after you do it two or three  
24    times, they get frustrated. They don't respond. The  
25    MDL Judge then refuses to let you withdraw from

1 representing the client. So, you are in a conundrum of  
2 what to do.

3           It looks like you are the bad guy. The  
4 referral lawyer is trying his best to get -- but after  
5 the plaintiff has done a fact sheet for the referral  
6 lawyer, a fact sheet that I give, and then ultimately  
7 the new fact sheet that both parties agree to, and then  
8 you have all of these deficiencies, they just say: The  
9 hell with you. I have done that before and I am not  
10 going to respond. And then the Judge is on your case  
11 about, hey, you have got to do something to get this  
12 information, but they won't let you withdraw, nor will  
13 they let your referral lawyer withdraw, so you are faced  
14 with looking like a fool in front of the Court. Even  
15 though there is this going on.

16           And the only reason I bring it up is because,  
17 you know, if these people hadn't done it two and three  
18 times and then they just give up, it is something, I  
19 think, with you going to Palm Beach shortly that should  
20 be discussed as to what you do and how do you get out of  
21 the conundrum if you have done as much as you can do,  
22 but then the Court says I am not going to let you off  
23 the pleadings because you filed the lawsuit.

24           THE HONORABLE MAGISTRATE JUDGE BOYLAN: Could  
25 the order that Judge Frank is considering also address a

1 mechanism by which a motion to withdraw could be teed up  
2 for consideration without further hearing if in fact a  
3 representation is made to the Court that the lawyer,  
4 either the referral lawyer or the MDL lawyer, has made  
5 appropriate efforts, reasonable efforts to obtain the  
6 compliance with the Court's order without success?

7 MR. BECNEL: Well, that would be something  
8 that you guys need to think about, because it puts you,  
9 number one, it puts you in a bad light.

10 In many instances, the Plaintiffs have filled  
11 out two or three fact sheets, but the Defendants, you  
12 know, you forgot this area code, you forgot this -- and  
13 they try to get their medical records. And a lot of  
14 these people, when you get these elderly people, they  
15 have been through 100 doctors. And they just get so  
16 frustrated and then they just throw their hands up. I'm  
17 not interested in the case anymore. But, you can't go  
18 dismiss it on your own, you know. And you're talking to  
19 your referral lawyer, please let us see if we can't get  
20 them to dismiss it? And they don't let you dismiss it  
21 and you are stuck.

22 So, what Judge Fallon just did in the  
23 Propulsid case that Richard was working on is he  
24 appointed a, quote, unquote, lawyer for -- what?  
25 Absentees, Richard, I think it was? Just somebody out

1 of the blue that the Court appointed in that case so  
2 that that person would not be stuck by himself. Could  
3 you probably explain it better, because you negotiated  
4 that part of it. But, I am just pointing out some  
5 things that happen, that you wind up having to take  
6 appeals all the way up to the Appellate Courts and it is  
7 not a pretty way to do things. I don't know what the  
8 solution is, I am just bringing it up because you are  
9 talking about the very issue right now.

10 THE HONORABLE JUDGE FRANK: All right.

11 MR. BECNEL: That opinion is with the Circuit  
12 Court out of Washington. It just came out a couple of  
13 weeks ago.

14 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Okay.

15 MR. ZIMMERMAN: All of which goes, of course,  
16 to the issue of trying to simplify the process and make  
17 it easier.

18 THE HONORABLE JUDGE FRANK: Well, and it  
19 probably goes to that trilogy, you know. I don't think  
20 we will find it in the Rules of Civil Procedure, but,  
21 you know, especially with MDL's, communication,  
22 communication, communication. It is easier said than  
23 done sometimes, but that probably falls on our -- many  
24 of us in here, on our shoulders to try to do whatever we  
25 can to facilitate that.

1 MR. ZIMMERMAN: Communication is delicate.

2 THE HONORABLE JUDGE FRANK: It can be.

3 MR. ZIMMERMAN: Document depository status.  
4 I'm not sure that there is anything to report, other  
5 than that the document depository of the MDL is working  
6 very well.

7 We have been satisfied with the way that  
8 documents can be produced in preparation for discovery.  
9 In depositions, we have been satisfied with the ability  
10 to review both online and after depository documents,  
11 and we have been satisfied with the ability to sort.  
12 There is an issue that has to do with, I believe, some  
13 e-mail search issues that are not ripe for today.

14 We are going to be meeting and conferring on  
15 that, which really doesn't have to do with the document  
16 depository, it has to do with the sorting issue. But, I  
17 don't have anything further to say on the document  
18 depository, except to say that we are very happy with  
19 it. It seems to be going as well as can be expected,  
20 and that it is producing the documents as we need them.  
21 And it is posting and storing those documents  
22 appropriately, given all of the circumstances.

23 THE HONORABLE MAGISTRATE JUDGE BOYLAN:  
24 Anything the Defense wanted to add to that?

25 MR. PRATT: No, nothing, Your Honor.



1                   MR. ZIMMERMAN:   And I think one of my  
2   co-counsel, co-lead counsel Seth Lesser says, it is  
3   obvious to anyone who wants access to that.

4                   We are trying to not get overburdened, but at  
5   first we had to keep it limited to the people who were  
6   doing the reviews and setting it up.   But, now the  
7   depository is available for people who want to come  
8   there or go online through the various security  
9   measures.

10                  THE HONORABLE MAGISTRATE JUDGE BOYLAN:  
11   Including the state litigants?

12                  MR. ZIMMERMAN:   Including the state  
13   litigants.   We have to strike a deal with them, and at  
14   this point they haven't been interested in -- we haven't  
15   been able to strike that deal, but I'm going to report  
16   on that to Judge Leary this afternoon.

17                  But, we make that available at the same cost  
18   and on the same basis as any MDL participant would be  
19   available, no more, no less.   But, we think that is just  
20   about as fair a proposition as we can possibly make.

21                  MR. BURTON:   Your Honors, Mark Burton.   If I  
22   could touch on this topic?   I have some cases filed here  
23   in the MDL, as you know, I also have some in Minnesota  
24   State Court litigation --

25                  THE HONORABLE MAGISTRATE JUDGE BOYLAN:   Why

1 don't you come up to the podium so the Court Reporter  
2 can hear you better?

3 MR. BURTON: And we would appreciate it if  
4 there was some sort of formal -- either posted on the  
5 Court's website about how exactly an MDL participant  
6 case can access the depository, so that that's out for  
7 everybody to understand exactly how that process works,  
8 because there has been quite a bit of confusion about  
9 it.

10 There are some representatives from the  
11 Minnesota State Court cases that recently visited the  
12 depository. But, one of the issues seems to be the  
13 agreement about how some of those attorneys can access  
14 that site. And there seems to be some confusion about  
15 that that can't be cleared up.

16 THE HONORABLE MAGISTRATE JUDGE BOYLAN: That  
17 is in the process of being cleared up, I presume?

18 MR. BURTON: Well, I think it is in the  
19 process. We hope that can be cleared up. But, one of  
20 the problems is that, first, some of the State Court  
21 litigants want to do their own discovery. Of course  
22 they don't necessarily want to duplicate some of the  
23 discovery that has already been done, but at the same  
24 time, they don't want to pay two fees, for instance, if  
25 they are going to be stuck paying a fee to the MDL

1 Committee and they could be stuck paying a fee  
2 potentially in the state litigation or something else  
3 when they are doing their own discovery. They are  
4 concerned about that issue.

5 And the attorneys that have cases filed in  
6 both forms are concerned about that issue because they  
7 are concerned about whether or not there is going to be  
8 a problem with forcing them to sign all of their cases,  
9 no matter where they are filed, on to an MDL case.

10 That is a big concern for them, especially  
11 when they are out there getting trial dates, settling  
12 cases potentially in State Courts out there, and doing  
13 their own discovery about what type of fee they are  
14 going to be committed to to the MDL, especially when  
15 they have MDL cases that are entitled to be able to go  
16 to that depository without their attorneys being  
17 conditioned upon for any other cases.

18 So, we would just ask that anything be posted  
19 on the website, as well, about exactly what the  
20 procedure is for an MDL case to gain access to the  
21 depository and any of the documents, Your Honor.

22 THE HONORABLE JUDGE FRANK: Sure.

23 MR. ZIMMERMAN: Your Honors, we are happy to  
24 put something on the website. We haven't heard from the  
25 state that they are willing to sign on or want to sign

1 on for the access.

2 I know that last Wednesday several people, I  
3 don't know who exactly, from the State Courts came over  
4 to our offices, our annex to our office, not in our  
5 office, annex to our office in Downtown Minneapolis and  
6 reviewed the document depository and the access and  
7 worked with our administrator Elizabeth Peterson, who is  
8 here, who went through the drill and showed them how to  
9 get access.

10 I mean, it is really pretty simple. You sign  
11 on to say, I want to have access. You agree to pay the  
12 same assessment as everybody else pays, including myself  
13 and my cases, and you have the access.

14 I think the fact that maybe they are going to  
15 have something in State Court maybe some other fee or  
16 charge or modality over there, I can't control that,  
17 Your Honors. I don't have any input, nor do I control  
18 it. We are talking about 26 cases. And we are happy to  
19 cooperate. We want to have as smooth and as seamless of  
20 an access to every litigant that signs on to the rule  
21 book that we all sign on to. So, we're happy to do  
22 that.

23 THE HONORABLE JUDGE FRANK: So, how can we  
24 coordinate -- in other words, your expression was we  
25 will roll something on to our website. And who should

1 be our contact person?

2 MR. ZIMMERMAN: Well, Ron Goldser of our  
3 office is really the person who is instrumental, and  
4 Elizabeth who is not with our office, but she is with  
5 the depository, to getting the licenses and getting the  
6 access and making sure we have the proper  
7 confidentiality form signed and the proper access form  
8 signed. But, that is really all it takes.

9 THE HONORABLE JUDGE FRANK: So, what we will  
10 probably do, if I understand this correctly, we will  
11 have Amy Gernon talk to Ron at some time soon, and we  
12 can roll some explanation out on to our court website.

13 MR. ZIMMERMAN: That is precisely correct.

14 THE HONORABLE JUDGE FRANK: All right.

15 MR. BURTON: That is fine.

16 MR. ZIMMERMAN: We certainly want to make it  
17 as friendly and as accessible as humanly possible.

18 MS. PEARSON: Can I speak from here?

19 THE HONORABLE JUDGE FRANK: Why don't you  
20 come on up, Gale?

21 MS. PEARSON: I'm sorry.

22 THE HONORABLE JUDGE FRANK: Even though it is  
23 a small courtroom, if you get beyond this ceiling part,  
24 the sound doesn't project very well up here.

25 MS. PEARSON: All right. I apologize. I am

1     Gale Pearson. And Bucky, I sent you, and I know you  
2     haven't had time to look at it, but we did tour, Marti  
3     Wivell, myself, Paul Deiseth and Steve Randall the  
4     depository. Elizabeth was a wonderful host, did a great  
5     job of giving us as much information as she could  
6     answer.

7                     There is a list of about eight additional  
8     questions we have about the details. And I am a very  
9     detailed person. So, I sent a list of those questions  
10    to Bucky. I know he hasn't had a chance to look at them  
11    yet. Hopefully, we will get the answers to that  
12    question. We are interested in making this process as  
13    efficient as possible, but there are a lot of concerns  
14    we have, also. And I would just like us to be able to  
15    address our concerns and not have to give away the farm  
16    on this issue. All right?

17                    Thank you so much.

18                    THE HONORABLE MAGISTRATE JUDGE BOYLAN: Mr.  
19    Pratt? You were going to say something?

20                    MR. PRATT: Just a quick thing. There are  
21    about three different contingents out here that are  
22    involved in this issue: One, of course, is in this  
23    courtroom with Your Honors; but, we are going to meet  
24    with Judge Leary this afternoon and we will be  
25    addressing these same issues with him.

1           The Plaintiffs have issues among themselves  
2   in terms of how to get access and how to allocate costs  
3   and all of that.

4           We produced on the Defense side 9.3 million  
5   pages of documents. Our goal is to, as we have  
6   expressed to Judge Leary, to have a single document  
7   depository that state litigants, as well as MDL  
8   litigants, can access. I just don't think anything else  
9   makes sense. So, we are working toward that and we are  
10   going to talk about that with Judge Leary this  
11   afternoon. And I am gratified that the Plaintiffs,  
12   among themselves, both the MDL and the Minnesota State  
13   consolidated proceeding are working together. In fact,  
14   I think 22 of the 25 lawyers, Plaintiffs' lawyers in the  
15   Minnesota State Court proceedings also have MDL cases.  
16   So, I think among themselves, they are all bright,  
17   reasonable lawyers and ought to be able to work  
18   something out.

19           THE HONORABLE JUDGE FRANK: We'll move on?

20           MR. ZIMMERMAN: Status of ongoing discussions  
21   regarding broader production of e-mails. I briefly  
22   alluded to that. And the update on back-up production,  
23   these are meet and confer issues. We have outlined a  
24   lengthy letter on this, which is the process we use.

25           We have a problem, we outline it in a letter,

1 we agree to meet and confer. Often we bridge the gap,  
2 often we have to bring something to the Court, but it is  
3 the process that has been very useful to date.

4 On those two issues, 10 and 11, we have a  
5 letter outstanding outlining our issues. I think we are  
6 meeting on Friday, if I am not mistaken. There is a  
7 date set for the meet and confer. And hopefully we can  
8 get it resolved. If we don't, you can rest assured it  
9 will be brought to your attention.

10 MR. PRATT: The Defense side is adding that  
11 to the ever-lengthening list of items to meet and confer  
12 and always are pleased to talk.

13 MR. ZIMMERMAN: Talk is cheap. No, I didn't  
14 mean it. I withdraw that.

15 Arrowsmith-Lowe, expert withdrawn -- this  
16 isn't a big issue, Your Honor. We discussed it in  
17 chambers, we understand it. Arrowsmith-Lowe, the expert  
18 pro-offered by the Defense has now been withdrawn. And  
19 her representations are contained in certain briefs that  
20 are in our file. And we are going to make appropriate  
21 comment, amendments to the pleadings, be they from the  
22 Defendant or the Plaintiff, so those now withdrawn  
23 expert opinions and assertions are not in any way relied  
24 upon in the briefing.

25 Mainly, this has to do with the preemption



1 motion which is set before the Court on, I believe,  
2 November -- 9th of November.

3 THE HONORABLE JUDGE FRANK: So, does that  
4 mean -- and of course I was joking in chambers when I  
5 said we each have a Rule 403 under the Rules of Evidence  
6 chip in our brain that if the probative value  
7 substantially outweighs the prejudice, it goes over  
8 there. So, we will put that out of our mind, but in all  
9 seriousness, we had discussed the necessity, or lack  
10 thereof, of having to redact any references to that  
11 since it has been withdrawn, since it is clear what the  
12 positions of the parties are.

13 MR. ZIMMERMAN: Yes, it just becomes a  
14 matter -- because these briefs get circulated, because  
15 they go beyond the four corners of, say, this  
16 litigation, and maybe they get referred to in other  
17 litigation, we just want to make sure that the record is  
18 clear and precise on its face, that the now withdrawn  
19 expert is in fact withdrawn, so it doesn't somehow get  
20 elevated to non-withdrawn status, either here, which  
21 obviously with a chip in your brain we don't have to  
22 worry about, but perhaps as we get down the road in some  
23 other litigation, it gets referenced, and therefore it  
24 gets to be mistaken. And we are concerned about it  
25 because it was contained in a motion to dismiss for a

1 federal preemption, which is a subsequent issue for all  
2 of the parties.

3 MR. PRATT: Just so we are clear on this, as  
4 I understand it, we submit an affidavit of Dr.  
5 Arrowsmith-Lowe in support of our preemption motion. We  
6 have now, and I will state for the record, withdrawn the  
7 Affidavit of Dr. Arrowsmith-Lowe. Issue closed, I  
8 believe.

9 We have no plans to go back and redo the  
10 briefs and all of the papers to delete everything  
11 regarding Dr. Arrowsmith-Lowe. The record should be  
12 clear that we are not relying on the affidavit, but that  
13 is the end of the issue as I understand it.

14 THE HONORABLE MAGISTRATE JUDGE BOYLAN:  
15 Except that it is my understanding that the Plaintiffs  
16 are going to at least reserve the right to alert us to  
17 that fact in their written submissions.

18 MR. PRATT: They are welcome to do that, Your  
19 Honor.

20 THE HONORABLE MAGISTRATE JUDGE BOYLAN: They  
21 are welcome to do that, okay.

22 MR. ZIMMERMAN: The record needs to be clear.  
23 How we do that is a matter of what we are now  
24 discussing, and that is why it is on the agenda.

25 The next issue, Your Honors, is number 13 on

1 the next page, corporate witness deposition. And my  
2 understanding is that we are meeting and conferring on  
3 those issues, as well, that there is nothing for a  
4 decision or -- it is just an updated status regarding  
5 trying to schedule these appropriate corporate witness  
6 depositions which have, of course, some sensitivity  
7 because they are currently working at the company doing  
8 work, and now we need to take them off of that path  
9 while we provide -- while we obtain their testimony.  
10 And we are working with the other side to schedule these  
11 appropriately and get them in in a timely fashion, given  
12 what the Court said about the very firmness of the  
13 representative trial dates set for March of 2007.

14 There is an authorization --

15 THE HONORABLE MAGISTRATE JUDGE BOYLAN: Let's  
16 wait.

17 MR. PRATT: Mr. Zimmerman, just one quick  
18 point on that. We just received yesterday, we, the  
19 Defendants, a six-page letter from the Plaintiffs'  
20 Steering Committee outlining depositions they wish to  
21 take, some additional discovery they want to proceed  
22 with.

23 We are evaluating that letter. We have asked  
24 them to cut down on the number of corporate witnesses  
25 they want to depose. But, we are going through their

1 list and they have added some, and I think they have  
2 taken some off. But, we will continue to discuss with  
3 them and hopefully resolve the issues on the  
4 depositions.

5 We will also look at their requests for  
6 additional documents, which seem to be coming fairly  
7 regularly, now. We will see if we can resolve that. If  
8 not, we will involve Your Honors in the process.

9 MR. ZIMMERMAN: Authorization extending  
10 beyond ten years, I guess this is a defendant issue. We  
11 did discuss it. Hopefully this will be part of the  
12 process of the Plaintiff fact sheet, simplification,  
13 meet and confer, but there has been some disconnect  
14 amongst some Plaintiff's lawyers as to that obligation.  
15 It is clear to me. I think it is clear from the Court's  
16 orders that --

17 THE HONORABLE JUDGE FRANK: We will cover  
18 that issue, too, in this order that is going to come out  
19 in the next 24 hours. While I think reading  
20 everything -- it is easy for me to say, because I don't  
21 have the clients you each have, but I think in reading  
22 everything in context, it is crystal clear.

23 And I may be the only one in the room that  
24 thinks so, so rather -- I think we have an agreement.  
25 We will go ahead and do an order, whether it is crystal

1 clear or something far less than that, as to -- and I  
2 think it will address this issue, as well as the others,  
3 so --

4 THE HONORABLE MAGISTRATE JUDGE BOYLAN: But  
5 tell me if I am mistaken, wasn't there some plan between  
6 the attorneys to meet and confer concerning -- for the  
7 proposed stipulation with an attachment that would be  
8 the authorization? Is that in connection with the  
9 previous --

10 MR. ZIMMERMAN: It is connected, but we  
11 talked about it at two different times. But, they are  
12 certainly related.

13 THE HONORABLE MAGISTRATE JUDGE BOYLAN: You  
14 still intend to do that?

15 MR. ZIMMERMAN: Yes, because there is this  
16 issue -- and I don't want to put it all on the record  
17 about blank authorizations, and if you had cardiac  
18 doctors how far back after ten -- and I think that is  
19 all part of this target that we are trying to address to  
20 make sure that it is all crystal clear, although  
21 certainly in the author's mind it is crystal --

22 THE HONORABLE JUDGE FRANK: It might be only  
23 in my mind, apparently.

24 MR. ZIMMERMAN: And I think -- I know the  
25 Court understands. If you have got a Boston Scientific

1 case that has come in and you are about to file a case,  
2 there is a lot of history and orders and --

3 THE HONORABLE JUDGE FRANK: True.

4 MR. ZIMMERMAN: Moving around, and someone  
5 has to look at it and we are trying to make it more  
6 simplified so this is all contained in a similar  
7 document so that there is no disconnect.

8 We are not trying to -- we don't want to  
9 confuse anybody, but we are not -- we can't hold their  
10 hands, either. So, we are just trying to make it a  
11 little more simple. Obviously, people that are in these  
12 proceedings every day, every week, they know the rules  
13 of engagement. It is mostly for people who are not  
14 participating on a regular basis that we want to make  
15 everything crystal clear.

16 THE HONORABLE JUDGE FRANK: Why don't we do  
17 this, then? If when I roll out another order tomorrow,  
18 if one or both sides of this say, well, we think the  
19 Judge, crystal clear or not, missed the target we  
20 thought he was supposed to hit, why don't you just get  
21 back to us?

22 Because, obviously, everyone is going to  
23 benefit if we get this down. So, even if we don't all  
24 agree on what it should say, everybody agrees with the  
25 end product that that is what it does say, even if it is

1 not what everybody exactly wanted. So, if I missed in  
2 some way the target once this order rolls out tomorrow,  
3 if I am so informed that there is something else I can  
4 do, I will do it. So --

5 MR. ZIMMERMAN: And I think you put your  
6 finger on it, Your Honor. We are all on each side so  
7 concerned that our points get accepted within the  
8 judgment of the Court, that we are not always clear that  
9 somebody else looking at it understands the trail so  
10 that they know what it is, in fact, we are being crystal  
11 clear about.

12 THE HONORABLE JUDGE FRANK: No, but the other  
13 side of it is, with few, if any, exceptions, I think  
14 everybody has been reasonable in their approach on this.  
15 This isn't a situation where somebody is off on their  
16 own, and so I think it is probably something we can  
17 address and resolve. So --

18 MR. ZIMMERMAN: Thank you.

19 I think 15, Your Honor, page limits on  
20 briefing, especially summary judgment briefing in  
21 connection with the preemption issue, we discussed that  
22 in chambers, and the Court has a procedure. And maybe  
23 the Court wants to maybe announce it more than me  
24 repeating it, but there was some shock waves set by a  
25 recent resent order that came out from this District,

1 but not by this Court that people have raised some  
2 concerns about.

3 I think that the Plaintiffs' Steering  
4 Committee understands, the Lead Counsel Committee  
5 understands, the Defendant understands, but we just  
6 don't know what the Court has changed its policy as to  
7 how this should be done based upon an order of another  
8 judge, or whether or not we should be in peril for  
9 anything we have done in the past.

10 THE HONORABLE JUDGE FRANK: Is he in peril  
11 with you, Judge Boylan? He is not in peril with me.

12 MR. ZIMMERMAN: Well, I have been in peril  
13 sometimes, however. But, be that --

14 THE HONORABLE MAGISTRATE JUDGE BOYLAN: I was  
15 going to say, we have local rules and we don't think  
16 that anybody in this room can violate them.

17 MR. ZIMMERMAN: I like him.

18 THE HONORABLE JUDGE FRANK: I think rather  
19 than going into some fact-specific discussion, the  
20 majority of lawyers, if the page limit is -- I will just  
21 arbitrarily pick a number -- is 50 pages, they don't  
22 file a 50-page brief -- and the page limit is for both  
23 the reply brief and the opening brief. They don't file  
24 the maximum page thing on August 1st and then let it  
25 simmer and let it boil for two months, and then the next



1 time the Judge or the opposing counsel hears about it,  
2 there is a 25-page reply brief that hasn't even had a  
3 whisper to the Judge of the other side, 98 and a half  
4 percent or above lawyers don't behave or conduct  
5 themselves that way. Nobody has here. So, I don't  
6 think there are any proclamations. Most people ask for  
7 the request, or they have agreed to something with  
8 opposing counsel. It is that extreme example that I  
9 think gets people into trouble. And I have no comment  
10 about the case you are talking about with Judge  
11 Schiltz --

12 MR. ZIMMERMAN: I can imagine why.

13 THE HONORABLE JUDGE FRANK: All right. But,  
14 I don't think there is a burning issue that we are aware  
15 of. It hasn't been a problem and it usually isn't a  
16 problem.

17 MR. ZIMMERMAN: I understand. And we also  
18 always seek consent of the other side, and they of us.

19 THE HONORABLE JUDGE FRANK: Mr. Pratt must  
20 think it is a problem.

21 MR. PRATT: Well, I am a little confused  
22 because I haven't read the order, but in the informal  
23 conference there was something about cigar smoking. And  
24 I occasionally indulge in cigar smoking. And I don't  
25 know whether that, by doing so would violate a local

1 rule or not.

2 MR. ZIMMERMAN: I don't worry about anything  
3 you do to your health. Keep it up.

4 THE HONORABLE MAGISTRATE JUDGE BOYLAN: If  
5 you are here before Judge Doty, you're going to be fine.

6 MR. PRATT: Oh, okay.

7 THE HONORABLE JUDGE FRANK: And whether you  
8 have to ask him before you light it up or after, I'll  
9 leave that to --

10 MR. PRATT: Now, it is clear.

11 THE HONORABLE MAGISTRATE JUDGE BOYLAN: More  
12 important than cigar smoke, the order that we are  
13 speaking of, both in a rather detailed fashion about  
14 what might happen if you violated the Court Order, and  
15 it went right to attorneys' fees, which is near and dear  
16 to everyone's heart, so that is the conundrum.

17 But, no, we understand the preemption issue  
18 is an important one and that it may indeed be one that  
19 the parties are going to proceed with in their initial  
20 briefing.

21 MR. ZIMMERMAN: And we don't know if either  
22 party needs additional pages, but we'll seek that well  
23 in advance and not do it --

24 THE HONORABLE JUDGE FRANK: And most lawyers  
25 don't want to engage in a complicated or time-sensitive

1 motion practice to make that happen. Again, with a  
2 little communication, those things are almost always  
3 worked out. When they aren't, a brief order from the  
4 Judge.

5 THE HONORABLE MAGISTRATE JUDGE BOYLAN: You  
6 talk to the law clerk and they say there is a direct  
7 correlation between the shorter brief and the success of  
8 the motion.

9 MR. ZIMMERMAN: Right, and sit down and you  
10 have the answer that you want, right?

11 There is an additional item on the agenda,  
12 Your Honor, that had to do with personal representatives  
13 or guardians in the event of the filing of a death case.  
14 And I believe we had some discussions with chambers  
15 because I believe the Court had been getting some direct  
16 calls from Plaintiffs' counsel.

17 THE HONORABLE JUDGE FRANK: We have been.

18 MR. ZIMMERMAN: And if you want to address --

19 THE HONORABLE JUDGE FRANK: I would just  
20 indicate when we got calls, we have gotten two  
21 categories of calls in the last couple of weeks. And  
22 these are lawyer preparing a file on a case. And they  
23 are going to file here. And they are from out of state.  
24 And they have either minors for Plaintiffs, and it is  
25 not necessarily a death case; and adults where if there

1 is a death case.

2 Well, the first thing, not why I raised it  
3 this morning in the meeting, is so that we could avoid  
4 giving legal advice, but also we would be glad to note  
5 our position or practice. Because I think the rules at  
6 least here and under the State of Minnesota rules give  
7 some discretion to the Court, unless there is a dispute  
8 with who should be the guardian or representative.

9 If the case is filed here, we first said you  
10 should talk to the Lead Counsel Committee, and then  
11 either way, if the case is going to be filed here, they  
12 can come directly to me or to the Federal Court. And it  
13 could be both myself and or Judge Boylan, unless there  
14 is a dispute on who the guardian representative is going  
15 to be. They don't have to go elsewhere.

16 Now, if the case is filed outside of the  
17 state or there is otherwise a dispute, which I mentioned  
18 in the meeting this morning, I have all of the aftermath  
19 of all of the Red Lake shootings, and there is a dispute  
20 in almost every case as to who should be the  
21 representative in those cases, both the people that  
22 survived and did not survive. But, we will deal with  
23 those directly. If they are new cases filed here, we  
24 won't send the Plaintiffs elsewhere, but I think they  
25 should chat with, we suggested, with the Lead Steering

1 Committee first. And if anybody has any other  
2 questions, we can certainly answer them.

3 MR. ZIMMERMAN: And we were also thinking of  
4 putting a proposed order of that kind on to the website  
5 so that if someone needed to see what the form of order  
6 would be, it could be available, not unlike the form of  
7 complaints, by adoption.

8 THE HONORABLE JUDGE FRANK: Yeah, it is a  
9 different circumstance. We haven't had a call yet of  
10 saying, we filed a case in another state. What are you  
11 going to require -- or we are about to file in another  
12 state. What do you want us to do? Because there may be  
13 some state law considerations, then, that may not mirror  
14 what Minnesota has. But, those are the calls that came  
15 in this past week.

16 MR. ZIMMERMAN: Right. We were talking about  
17 direct filing in this District, yes.

18 I believe that concludes the agenda as  
19 provided to the Court and the addition of the death  
20 case, personal representative. I don't know if the  
21 Court or counsel have anything further, who is here,  
22 otherwise we could --

23 THE HONORABLE JUDGE FRANK: First we can  
24 talk -- or we can deal with the respective counsel  
25 tables. Anything further, Mr. Pratt, on your client's

1     behalf?

2                   MR. PRATT:   Nothing presently, Your Honor.

3                   THE HONORABLE JUDGE FRANK:   Mr. Zimmerman?

4                   MR. ZIMMERMAN:   No, Your Honor.

5                   THE HONORABLE JUDGE FRANK:   Any other counsel  
6     in the gallery or audience that if you haven't been  
7     heard, you either want to note something for the record  
8     or wish to be heard?

9                   Dates are, again, October 26th -- we will put  
10    that out for the -- and that is scheduled at this time  
11    for St. Paul.   October 12th, for the telephone  
12    conference, and I believe our preemption dispositive  
13    motion, that hearing is set for November 9th.

14                  MR. ZIMMERMAN:   Will that be in St. Paul and  
15    what time will that start, Judge, for the record?

16                  THE HONORABLE JUDGE FRANK:   Amy?

17                  MS. GERNON:   The preemption is scheduled for  
18    nine in Minneapolis.

19                  THE HONORABLE JUDGE FRANK:   I think we set it  
20    in Minneapolis because we anticipated people may be  
21    there.

22                  Mr. Price is about to make sure we got it  
23    right, here.

24                  MR. PRICE:   We talked about it in the context  
25    that there would have been quite a large crowd at the

1 Medtronic motions so we thought Minneapolis would be  
2 better.

3 THE HONORABLE JUDGE FRANK: Minneapolis, 9:00  
4 a.m.. In terms of the courtroom -- and actually, in the  
5 next couple of weeks, this is true not just for the MDL,  
6 but for many hearings in Minneapolis and St. Paul, up  
7 until, you know, right about now, you can go on the  
8 kiosk in each building to see where the hearing is.

9 We are going to roll it out on our website  
10 for all cases, not just MDL, so you can go on. And the  
11 calendar is updated every hour, and so you can go on for  
12 any case and see it is in that courtroom and that  
13 courthouse at that particular time. So, but right now  
14 scheduled, we don't have the specific courtroom, but --

15 THE CLERK: We do, Your Honor.

16 THE HONORABLE JUDGE FRANK: We do. 13W, we  
17 do. So, 13W, 9:00 a.m., on November 9th. So --

18 THE HONORABLE MAGISTRATE JUDGE BOYLAN: I  
19 just have two things. I would like to remind Mr. Ramey  
20 I would like to have him and Mr. Pratt meet today for  
21 that in-person conference. And I would like to see Mr.  
22 Zimmerman in my chambers afterwards.

23 All right, thank you.

24 THE HONORABLE JUDGE FRANK: We are adjourned.  
25 Thank you very much.

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(Adjournment.)

Certified by: \_\_\_\_\_  
Jeanne M. Anderson, RMR-RPR  
Official Court Reporter